

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ASHLEY ADAMS, individually and as the representative §
of the Estate of RODNEY GERALD ADAMS; and §
WANDA ADAMS, individually; §

CARLETTE HUNTER JAMES, individually and as the §
representative of the Estate of KENNETH WAYNE §
JAMES; KRISTY JAMES, KRYSTAL JAMES, §
KENDRICK JAMES, ARLETT JAMES, JONATHAN §
JAMES and KENNETH EVANS, individually and as §
heirs-at-law to the Estate of Kenneth Wayne James, and §
MARY LOU JAMES, individually, §

CADE HUDSON, individually and as the representative §
of the Estate of DOUGLAS HUDSON, §

PLAINTIFFS §

v. §

BRAD LIVINGSTON, individually and in his official §
capacity, JOE OLIVER, NANCY BETTS, L. FIELDS, §
JOHN DOE, ROBERT LEONARD, BRANDON §
MATTHEWS, DEBRA GILMORE, SARAH RAINES, §
DANNY WASHINGTON, MATTHEW SEDA, TULLY §
FLOWERS, DORIS EDWARDS, LINDA McKNIGHT, §
REVOYDA DODD, RICK THALER, WILLIAM §
STEPHENS, ROBERT EASON, DENNIS MILLER, §
REGINALD GOINGS, and OWEN MURRAY in their §
individual capacities, TEXAS DEPARTMENT OF §
CRIMINAL JUSTICE, and UNIVERSITY OF TEXAS §
MEDICAL BRANCH §

DEFENDANTS §

CIVIL ACTION NO.
6:13-cv-712-KNM
JURY DEMANDED

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY
IN RESPONSE TO LIVINGSTON'S MOTION TO DISMISS**

Plaintiffs advise the Court of persuasive authority supporting their response to
Defendant Brad Livingston's motion to dismiss Plaintiffs' complaint (Doc. 31).

On December 19, 2013, Judge Brian A. Jackson of the Middle District of Louisiana granted injunctive relief to prisoners on Louisiana's Death Row who were routinely exposed to high indoor heat indexes because the prison did not have air conditioning. Judge Jackson found high indoor temperatures were cruel and unusual, and ordered the Louisiana prison system to "immediately lower and maintain the heat index in the [prison] at or below 88 degrees Fahrenheit" and maintain temperatures below 88 from April 1 to October 1 each year. Ex. 1, *Bell v. LeBlanc*, No. 3:13-cv-00368-BAJ, Doc. 87 (M.D. La. Dec. 13, 2013).

Notably, Mr. Adams, Mr. James, and Mr. Hudson suffered from the same medical conditions as the Louisiana prisoners, and the indoor heat indexes at issue here are just as high. *See e.g., id.*, p. 18. In *Bell*, the court was (correctly) concerned that indoor heat indexes exceeded 104. *Id.*, p. 25 ("on every single day during the collection period, inmates housed in [the prison] were subjected to heat indices in the National Oceanic and Atmospheric Administration's National Weather Service's 'extreme caution' zone or higher"). Here the Plaintiffs allege heat indexes inside the Gurney Unit also exceeded 100, soaring as high as 106, and reaching NOAA's "*extreme danger*" zone. (Amd. Complaint, Doc. 8, ¶¶ 155, 175-176, 198, 202).¹

The order discusses numerous previous decisions stating this is not a novel theory, and that many other courts have entered similar remedial orders. *Bell*, p. 79-82.

¹ Though Judge Jackson dismissed the Louisiana plaintiffs' Americans with Disabilities Act and Rehabilitation Act claims, he did so only because they did not present evidence of their impairments at trial – "While the Court has no doubt that such diseases may limit one or more of Plaintiff's major life activities, the record is void of any *evidence* to support such a conclusion." *Bell*, p. 92. Here, Plaintiffs have alleged the deceaseds' disabilities impacted major life activities and Defendants UTMB and TDCJ correctly do not challenge that Hudson, James, or Adams were qualified individuals with a disability under the Acts.

Finally, Judge Jackson made it very clear the prison's "purported financial hardships can never be an adequate justification for depriving any person of his constitutional rights." *Id.*, p. 95 (citing *Udey v. Kastner*, 805 F.2d 1218, 1220 (5th Cir. 1986)).

Thus, Plaintiffs request this Court follow Judge Jackson and deny Livingston's motion to dismiss Plaintiff's §1983 claims.

DATED: December 31, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Eastern District of Texas.